

COPY

CAUSE NO. 141-241931-09

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff	§	
	§	
	§	
VS.	§	TARRANT COUNTY, TEXAS
	§	
LAURIE D'ALLEVA d/b/a DISCOUNT	§	
MEDSPA a/k/a ONTARIO MEDSPA,	§	
	§	
Defendant.	§	141st JUDICIAL DISTRICT

FINAL JUDGMENT AND AGREED PERMANENT INJUNCTION

Plaintiff, the STATE OF TEXAS, acting by and through Attorney General Greg Abbott ("State"), and Defendant LAURIE D'ALLEVA d/b/a DISCOUNT MEDSPA a/k/a ONTARIO MEDSPA having consented to the entry of this Final Judgment and Agreed Permanent Injunction ("Judgment") have jointly moved that the Court enter this Judgment.

LAURIE D'ALLEVA d/b/a DISCOUNT MEDSPA a/k/a ONTARIO MEDSPA consents and agrees to the entry of this Judgment and agrees that the terms of said agreement are fair, just and equitable. Defendant further agrees that Plaintiff's execution of this Judgment does not constitute an approval by the Plaintiff of her business practices.

LAURIE D'ALLEVA d/b/a DISCOUNT MEDSPA a/k/a ONTARIO MEDSPA stipulates that she operated discountmedspa.com and ontariomedspa.com.

LAURIE D'ALLEVA d/b/a DISCOUNT MEDSPA a/k/a ONTARIO MEDSPA has read and understands this final judgment and agreed permanent injunction and enters into it voluntarily and understands the meaning and effect of each provision of this final judgment and agreed permanent injunction.

Defendant LAURIE D'ALLEVA d/b/a DISCOUNT MEDSPA a/k/a ONTARIO

MEDSPA stipulates that Defendant's indebtedness to the State of Texas for civil penalties, identified in paragraph 8 below, for violations of the DTPA and TFDCA, having been found by this court to constitute a civil fine or penalty to and for a governmental unit and not compensation for actual pecuniary loss, is a debt that would be nondischargeable in a subsequently filed bankruptcy proceeding under either Chapter 7 or Chapter 11 and that, in the event a voluntary or involuntary chapter 7 or chapter 11 bankruptcy proceeding is commenced against the debtor, the debtor stipulates that she shall not contest either directly or indirectly future attempts, if any, by the State of Texas to have such debt declared nondischargeable in accordance with 11 U.S.C. § 523(a)(7).

LAURIE D'ALLEVA d/b/a DISCOUNT MEDSPA a/k/a ONTARIO MEDSPA stipulates that the State of Texas' agreement to and the Court's approval of this Judgment are expressly premised upon her stipulation that she will not own, direct, operate, manage, or participate in any business or organization which distributes or sells prescription drugs or devices in Texas or into Texas.

The Court, after reading the pleadings and stipulations of the parties, finds that because of Defendant's participation in operating discountmedspa.com and ontariomedspa.com there is good cause for the entry of this judgment, and it appearing to the Court that all parties agree to and have approved its entry of this Judgment, makes the following orders under the provisions of the TFDCA and the DTPA. The Court is of the opinion that, in view of these findings, said agreement should be and is hereby in all things approved, and accordingly that this Judgment should be entered.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED THAT:

1. This Court has jurisdiction, through the TFDCA and the DTPA, over the subject

matter and over all parties to this action.

2. Plaintiff's Original Petition states a claim for relief against LAURIE D'ALLEVA d/b/a DISCOUNT MEDSPA a/k/a ONTARIO MEDSPA for violations of the TFDCA and the DTPA.

3. Venue of this matter is proper in Tarrant County pursuant to §431.047(c) and §431.0585(d) of the TFDCA, and §17.47(b) of the DTPA.

4. The following definitions shall be used in construing this Judgment:

- A. "Advertising" means all representations disseminated in any manner or by any means for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of prescription drugs or devices.
- B. "Defendant" means LAURIE D'ALLEVA d/b/a DISCOUNT MEDSPA a/k/a ONTARIO MEDSPA and her successors, assigns, officers, agents, servants, employees, corporations and any other persons in active concert or participation with the Defendant. The term "Defendant" includes any aliases by which LAURIE D'ALLEVA is or has been known.
- C. "Device" is defined in §431.002 (13) of the Texas Food, Drug, and Cosmetic Act and generally means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is recognized in the official United States Pharmacopoeia National Formulary or any supplement to it; is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease in man or other animals; or is intended to affect the structure or any function of the body of man or other animals and that does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and is not dependant on metabolization for the achievement of any of its principal intended purposes.
- D. "Drug" is defined in §431.002 (14) of the Texas Food, Drug, and Cosmetic Act and generally means articles designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man and articles intended to affect the structure or any function of the body of man, other than foods for which a claim is made in accordance with Section 403r of the Federal Act. A drug is not a food or device under the TFDCA.
- E. "False advertising" of a food, drug, device, or cosmetic means advertising that is false, deceptive, or misleading in any particular.

- F. "Misbrand" a drug or device means any action or inaction which causes a drug or device to meet one or more of the criteria listed in §431.112 of the Texas Health and Safety Code, including but not limited to, labeling of a drug or device which lacks adequate directions for use, advertising of a restricted device if the advertising is false or misleading in any particular; or using, selling, or distributing a restricted device in violation of federal regulations.
- G. "Practitioner" means a person licensed in the state in which he/she practices to administer or prescribe the use of prescription drugs and to use or order the use of prescription devices.
- H. "Practitioner licensed in Texas" means a person as defined in §483.001(12), Texas Dangerous Drug Act, TEX. HEALTH AND SAFETY CODE ANN. and in 25 Tex. Admin. Code §229.433(21) whose scope of practice encompasses the use of prescription drugs and devices in the treatment of humans.
- I. "Prescription drug," as defined in §503 (b)(1) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 353(b)(1) means "...[a] drug intended for use by man which - (A) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or (B) is limited by an approved application under section 355 of this title to use under the professional supervision of a practitioner licensed by law to administer such drug...."
- J. "Prescription device(s)" means a device(s) which, because of any potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use is not safe except under the supervision of a practitioner licensed by law to direct the use of such device, and hence for which adequate directions for use cannot be prepared; and therefore are required to bear a federal legend that states: "Caution: Federal law restricts this device to sale by or on the order of a _____" with the blank filled in with the designation of a practitioner licensed by the law of the State in which he practices to use or order the use of the device, as required by 21 CFR § 801.109.

5. The Court finds that Defendant advertised, offered to sell, and sold prescription drugs and devices through the internet websites found at www.discountmedspa.com and www.ontariomedspa.com.

6. **IT IS FURTHER ORDERED THAT** Defendant LAURIE D'ALLEVA shall not own, direct, operate, manage, or participate in any business or organization which distributes or sells prescription drugs or devices in Texas or into Texas.

7. **IT IS FURTHER ORDERED THAT** Defendant LAURIE D'ALLEVA d/b/a DISCOUNT MEDSPA a/k/a ONTARIO MEDSPA or any of her officers, agents, servants, employees, subsidiaries, assigns and any other person acting in concert or participation with or on behalf of Defendant shall not:

- a. Purchase and/or possess prescription drugs or devices for the purpose of offering to sell, selling, distributing, or dispensing the prescription drugs and devices to members of the public;
- b. Operate or post, either directly or indirectly through the use of a website hosting company, any website advertising, offering for sale and/or selling any prescription drug or device;
- c. Operate or post, either directly or indirectly through the use of a website hosting company, any website through which individuals can purchase prescription drugs and devices;
- d. Deliver, offer for sale, distribute, sell, give away, or receive for the purpose of delivering, offering for sale, distributing, selling, or giving away prescription drugs and devices, or use any other means of introducing into commerce drugs and devices;
- e. Introduce misbranded drugs and devices into commerce;
- f. Misbrand drugs and devices in commerce;
- g. Falsely advertise or falsely represent that prescription drugs and devices are available to and can be purchased by individuals without the involvement of a practitioner licensed to order the use of the prescription drugs or devices;
- h. Cause confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods by selling prescription drugs and devices to individuals;
- i. Represent that goods have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have by selling prescription drugs and devices directly to individuals without an order from a licensed practitioner;
- j. Establish or create, either directly or indirectly through the use of a website hosting company, any new website advertising, offering for sale, and/or selling prescription drugs or devices;
- k. Represent that goods or services are of a particular standard, quality, or grade if they are of another standard, quality, or grade by selling prescription drugs and

devices to individuals;

- l. Represent that a person has a sponsorship, approval, status, affiliation, or connection which she does not by representing that she is a member of the Texas Medical Council, which does not exist, and is licensed to sell prescription drugs and devices;
- m. Advertise, offer for sale, and/or sell drugs and devices through any means, including, but not limited to, email, internet social sites such as facebook, twitter, and myspace, websites, regular mail, flyers, or brochures;
- n. Provide, post on the internet, or direct consumers to instructional videos demonstrating the injection of drugs or devices; and
- o. Fail to provide written notice to any agent, servant, employee or representative of the existence and terms of any injunction entered in this case, and of their duty to comply with the terms set forth herein.

8. **IT IS FURTHER ORDERED THAT** Defendant LAURIE D'ALLEVA d/b/a DISCOUNT MEDSPA a/k/a ONTARIO MEDSPA shall pay Eighty-One Thousand Eight Hundred and Thirty-One Dollars (\$81,831.00) to the Office of the Attorney General as civil penalties pursuant to §431.0585 of the TFDCA and to §17.47(c)(1)-(2) of the DTPA. THIS ORDER shall further constitute a judicial determination that these civil penalties shall constitute a civil fine or penalty to and for a governmental unit, as defined under 11 U.S.C. §101(27), and are not compensation for actual pecuniary loss.

9. **IT IS FURTHER ORDERED THAT** Defendant LAURIE D'ALLEVA d/b/a DISCOUNT MEDSPA a/k/a ONTARIO MEDSPA shall pay Forty Thousand Dollars (\$40,000.00) to the Office of the Attorney General as attorneys fees and investigative costs under §431.047 of the TFDCA and the TEX. GOVT. CODE §402.006(c).

10. **IT IS FURTHER ORDERED THAT** Defendant LAURIE D'ALLEVA d/b/a DISCOUNT MEDSPA a/k/a ONTARIO MEDSPA shall pay Three Thousand One Hundred and Sixty-Nine Dollars (\$3,169.00) to cover the investigative costs of the Texas Department of State

Health Services pursuant to §431.047 of the TFDCA.

11. **IT IS FURTHER ORDERED THAT** Defendant LAURIE D'ALLEVA'S agreement to and the Court's approval of this Judgment are expressly premised upon the above stipulations, as relied upon by the State of Texas in negotiating and agreeing to the terms of this Judgment.

12. **IT IS FURTHER ORDERED** that Defendant shall pay all costs of the Court.

13. The clerk of the Court is authorized to issue such writs of execution or other process necessary to collect and enforce this Judgment.

14. The Court retains jurisdiction to enforce this Judgment.

15. It is agreed and understood that this Judgment shall in no way affect the rights of individual citizens.

16. All relief not granted herein is hereby denied.

Signed this 7 day of June, 2010.




DISTRICT JUDGE

THE UNDERSIGNED, WHO HAVE THE AUTHORITY TO CONSENT AND SIGN ON BEHALF OF THE PARTIES IN THIS ACTION, HEREBY CONSENT TO THE FORM AND CONTENTS OF THE FOREGOING FINAL JUDGMENT AND AGREED PERMANENT INJUNCTION AND TO ITS ENTRY:

Signed this 28th day of May, 2010.

DEFENDANT LAURIE D'ALLEVA d/b/a DISCOUNT MEDSPA a/k/a ONTARIO MEDSPA

By:


Laurie D'Alleva

Attorney for Defendant



UTTAM DHILLON

State Bar No.: 24070969

Fitzpatrick Hagood Smith & Uhl, LLP

Chateau Plaza, Suite 1400

2515 McKinney Avenue

Dallas, Texas 75201

Telephone: (214) 237-0900

Facsimile: (214) 237-0901

Date: 06/02/10

Plaintiff State of Texas

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

PAUL D. CARMONA
Chief, Consumer Protection and Public Health Division

D. ESTHER CHAVEZ
Deputy Chief, Consumer Protection and Public Health Division



JODIE SCIVETTI

Assistant Attorney General

State Bar No. 24058099

JOYCE WEIN ILIYA

Assistant Attorney General

State Bar No. 00784319

Consumer Protection and Public Health Division

1412 Main Street, Suite 810

Dallas, Texas 75202

Phone: (214) 969-7639, ext. 8826

Facsimile: (214) 969-7615

Attorneys for the State